

Below is an Opinion of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
BARBARA ANN SANGER-MORALES,) No. 14-31997-rld7
Debtor.) MEMORANDUM OPINION

On October 7, 2015, I heard ("Hearing") debtor Barbara Ann Sanger-Morales' ("Debtor") motion to dismiss her reopened chapter 7¹ case ("Motion to Dismiss"). After discussion with Debtor's counsel, I took the matter under advisement.

Following the Hearing, I have reviewed my notes and have taken judicial notice of relevant entries on the docket and documents filed in the Debtor's main chapter 7 case for the purpose of confirming facts not reasonably in dispute. Federal Rule of Evidence 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006). In addition, I have reviewed the authority cited to me by Debtor's counsel and have considered other relevant authorities as located through my own research.

¹ Unless otherwise indicated, all chapter and section references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 Based on that review and consideration, I will deny the Motion
2 to Dismiss and close the Debtor's reopened chapter 7 case, and I will not
3 vacate the discharge order entered in that case or alter or expunge the
4 petition date. Following are my findings of fact and legal conclusions
5 under Federal Rule of Civil Procedure 52(a), applicable with respect to
6 this contested matter under Federal Rules of Bankruptcy Procedure 7052
7 and 9014.

8 I. Relevant Facts

9 The Debtor filed her chapter 7 petition on April 9, 2014. In
10 her schedules, the Debtor included a total of \$47,498.64 of federal and
11 state tax debt on her Schedule E, with \$41,800.64 characterized as
12 priority tax debt. In her Schedule F, the Debtor listed general
13 unsecured claims totaling \$100,446.76, including \$18,539.94 of federal
14 tax debt from 2010.

15 Her § 341(a) meeting of creditors was scheduled for June 2,
16 2014, and she attended and testified at the § 341(a) meeting. The
17 chapter 7 trustee filed a "No Asset" report in the case on June 2, 2014,
18 following the § 341(a) meeting. A discharge order was entered on
19 September 19, 2014, and the case was closed.

20 On June 24, 2015, the Debtor filed a motion to reopen her
21 bankruptcy case. Following a hearing, the court granted Debtor's motion
22 to reopen. See Docket Nos. 22 and 25. On August 31, 2015, Debtor filed
23 her Motion to Dismiss. See Docket No. 27. In her Motion to Dismiss, the
24 Debtor moved to dismiss her chapter 7 case under § 707(a). She advised
25 that her primary purpose in filing her bankruptcy case was to obtain a
26 discharge of her federal and state tax debts. However, her counsel

1 apparently miscalculated the appropriate date for filing the case to
2 obtain a discharge of some of her priority tax debts and "filed the
3 bankruptcy petition seven (7) days too early to discharge all of the tax
4 debts under Section 523(a) of the Bankruptcy Code." Motion to Dismiss,
5 Docket No. 27, at 1. While § 707(a) provides that a bankruptcy court can
6 dismiss a chapter 7 case "only for cause," Debtor argues that the Motion
7 to Dismiss can be granted in the exercise of the court's discretion as a
8 matter of equity. Debtor further argues that the court should exercise
9 its discretion and grant her Motion to Dismiss because she has acted in
10 good faith throughout the case, did not unreasonably delay in filing her
11 Motion to Dismiss and is not abusing the bankruptcy system. In her
12 Motion to Dismiss, Debtor cited United States v. McDaniel (In re
13 McDaniel), 363 B.R. 239 (M.D. Fla. 2007), in support of her position.

14 At the Hearing, Debtor's counsel advised that In re McDaniel
15 was the only supporting authority that she had been able to find. From
16 the figures stated by Debtor's counsel at the Hearing, I can surmise the
17 Debtor's discharge covers some but by no means all of the Debtor's
18 federal and state priority tax debt.

19 As noted above, following the Hearing, I took the matter under
20 advisement, letting the Debtor and her counsel know that I would review
21 the decision in In re McDaniel in light of other relevant authorities.

22 II. Jurisdiction

23 I have jurisdiction to decide the Motion to Dismiss under 28
24 U.S.C. §§ 1334 and 157(b) (2) (A), (I) and (O).

25 III. Analysis

26 At the outset, I note that the Debtor's Motion to Dismiss is

1 underinclusive in terms of the relief the Debtor is requesting: She wants
2 her reopened chapter 7 case to be dismissed, but she also really wants
3 the discharge order to be vacated and the petition date expunged so that
4 she can refile for bankruptcy relief without being subject to the eight-
5 year limit on obtaining subsequent chapter 7 discharges provided for in
6 § 727(a)(8).

7 I also note that with general unsecured debt scheduled and
8 presumably discharged in a total amount in excess of \$100,000, it is
9 disingenuous for the Debtor to imply that her only purpose in filing for
10 chapter 7 relief was to obtain a discharge of her federal and state tax
11 debts. However, with total tax debts scheduled in excess of \$66,000 and
12 with approximately \$42,000 of those debts characterized as "priority," I
13 can agree that obtaining a discharge of federal and state tax debts was
14 "a" primary purpose of the Debtor's bankruptcy filing.

15 Section 707(a) provides:

16 The court may dismiss a case under this chapter [7]
17 only after notice and a hearing and **only for cause**,
including

18 (1) unreasonable delay by the debtor that is
prejudicial to creditors;

19 (2) nonpayment of any fees and charges required
under chapter 123 of title 28; and

20 (3) failure of the debtor in a voluntary case to
21 file, within fifteen days or such additional time as
the court may allow after the filing of the petition
commencing such case, the information required by
22 paragraph (1) of section 521(a), but only on a motion
by the United States trustee. (Emphasis added.)

23 None of the particular "causes" identified in § 707(a) apply in this
24 case.

25 However, the Debtor argues that "cause" is broader than the
26 specifics included in § 707(a), and the court can apply equitable

1 principles to grant the relief requested by the Debtor in this case. She
2 cites United States v. McDaniel (In re McDaniel), 363 B.R. 239 (M.D. Fla.
3 2007), for that proposition.

4 In McDaniel, the debtor filed a chapter 7 petition to discharge
5 \$60,496 in general unsecured claims and over \$324,000 in federal and
6 state tax debt. Id. at 241-42. However, in filing her bankruptcy case,
7 her counsel did not consider the time limits on discharging priority tax
8 debt set forth in §§ 507(a)(8)(A) and 523(a)(1). Id. at 242.
9 Consequently, the chapter 7 petition was filed too early to discharge all
10 of the debtor's tax debts. Id.

11 The debtor filed an adversary proceeding, seeking a
12 determination that all of her federal tax debts were dischargeable. Id.
13 After her initial counsel in the bankruptcy proceedings withdrew, the
14 debtor, through new counsel, filed motions to dismiss both the main case
15 and the adversary proceeding voluntarily, although a discharge order
16 already had been entered in the main case. Id. The United States
17 opposed dismissal, arguing that "cause" had not been established for
18 purposes of § 707(a). Id. at 243.

19 Applying equitable principles, the bankruptcy court balanced
20 the best interests of the debtor against the prejudice to the United
21 States and concluded that "the balance of the equities favored
22 dismissal." Id. The district court affirmed, finding no abuse of
23 discretion in the bankruptcy court's resort to equity to allow for
24 dismissal when "modest prejudice is balanced against the conduct of [the
25 debtor's] former attorney, her good faith, and her desire to obtain a
26 fresh start." Id. at 246.

1 Notable in the district court's decision in McDaniel is its
2 rejection of contrary authority from the Ninth Circuit Bankruptcy
3 Appellate Panel ("BAP") in Leach v. United States (In re Leach), 130 B.R.
4 855 (9th Cir. BAP 1991). In its published Opinion in Leach, the BAP
5 confirmed that, "[t]he bankruptcy court, as a court of law and a court of
6 equity, may evaluate a voluntary motion to dismiss using both legal and
7 equitable considerations." Id. at 856. In Leach, the Internal Revenue
8 Service had assessed income taxes against the debtor within 240 days
9 prior to his chapter 7 bankruptcy filing, making the tax debt
10 nondischargeable under §§ 507(a)(8)(A) and 523(a)(1). Id. The debtor
11 subsequently sought to dismiss his chapter 7 case voluntarily, arguing
12 that 1) he had no pressing reason to file when he did, 2) his attorney
13 "incorrectly advised him" as to the nondischargeability of his tax debts,
14 and 3) his tax liabilities would have been dischargeable if only he had
15 waited a few more months to file. Id. The debtor further advised that
16 if his motion to dismiss were granted, he would refile for chapter 7
17 relief as soon as the 240-day priority period for his tax debt had
18 expired. Id. The bankruptcy court denied his motion, concluding that
19 the debtor had not established cause for dismissal under § 707(a). Id.

20 The BAP affirmed, based on Ninth Circuit precedent.

21 The law in the Ninth Circuit is clear: a voluntary
22 Chapter 7 debtor is entitled to dismissal of his case
23 so long as such dismissal will cause no "legal
24 prejudice" to interested parties. In re International
Airport Inn Partnership, 517 F.2d 510, 512 (9th Cir.
1975)

25 Id. at 857. The BAP noted the United States' argument that dismissal in
26 these circumstances would preclude it from further collection of the

1 debtor's priority tax debt, and "this amounts to legal prejudice." Id.
2 at n.4. The BAP further noted that "a creditor need only show plain
3 legal prejudice, not significant legal prejudice." Id. at n.3.

4 The debtor argued that the bankruptcy court abused its
5 discretion in denying his motion to dismiss as he had established cause
6 as a matter of equity based on the following circumstances: 1) he had
7 filed his bankruptcy petition too early based on bad advice of his
8 counsel; 2) he had not acted fraudulently or in bad faith; 3) he had no
9 assets; 4) he was a recovering alcoholic; and 5) denial of his motion to
10 dismiss would effectively deny him his fresh start from his bankruptcy.
11 Id. at 857. The bankruptcy court considered the debtor's equitable
12 arguments but overruled them based on its determination that it would be
13 inappropriate to grant his motion to dismiss in light of the legal
14 prejudice that would result to the United States. Id. at 858. The BAP
15 concluded that the bankruptcy court did not abuse its discretion in so
16 deciding, and, indeed, would have abused its discretion if it had granted
17 the debtor's motion to dismiss in such circumstances. Id. See Hammerer
18 v. Internal Revenue Service, 18 B.R. 524, 525 (Bankr. E.D. Wis. 1982)
19 ("[D]ismissal should be denied where the debtor's purpose is to file a
20 new petition and in effect obtain an enlarged discharge, in violation of
21 the limitations that Congress has placed on chapter 7 relief.")
22 (citations omitted).

23 Ultimately, I find the authority of Leach more compelling than
24 McDaniel. First, Leach represents authority from within the Ninth
25 Circuit, based itself on Ninth Circuit authority, albeit from a
26 Bankruptcy Act decision. McDaniel is authority from outside the Ninth

1 Circuit. I am bound by Leach. See In re Tucker, 479 B.R. 873, 876
2 (Bankr. D. Or. 2012); In re Tong Seng Vue and Mai Yer Vue, 364 B.R. 767,
3 771-72 (Bankr. D. Or. 2007).

4 Second, a decision to dismiss Debtor's chapter 7 case, coupled
5 with vacating the discharge order and expunging the chapter 7 petition
6 filing, would prejudice state and federal revenue authorities in their
7 tax collection efforts. If the Debtor refiles, she will effectively
8 expand the scope of her discharge beyond the debts encompassed by the
9 entered discharge order. Under § 502(b), the amounts and allowance of
10 claims are determined "as of the date of the filing of the petition."
11 Altering the petition date in a chapter 7 case cannot help but change the
12 claims covered by the debtor's bankruptcy filing and potentially could
13 change their legal characterization. In this case, legal prejudice to
14 the revenue authorities inevitably would result from granting the relief
15 the Debtor wants.

16 Finally, the Debtor has obtained a discharge of over \$100,000
17 in general unsecured debts and at least a portion of her tax debts
18 through the discharge order entered in her case. It is true that she
19 will be left with some undischarged priority tax debt, but that
20 unfortunate result does not trump the legal prejudice to the revenue
21 authorities that will occur if I grant the Motion to Dismiss. In other
22 words, I do not conclude that equity justifies granting Debtor's Motion
23 to Dismiss in light of the prejudice that other interested parties will
24 suffer.

25 Accordingly, I find that the Debtor has not established cause,
26 as a matter of law or equity, to expunge her chapter 7 petition filing,

1 vacate the discharge order and grant her Motion to Dismiss. I will enter
2 an Order contemporaneous with this Memorandum Opinion denying the Motion
3 to Dismiss and reclosing the Debtor's chapter 7 case.
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